

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

HEATHER SMITH, individual and on
behalf of all other similarly situated,

Plaintiff,

v.

WHALECO INC. d/b/a TEMU,

Defendant.

Case No: CIV-23-559-D

Class Action

**DEFENDANT’S MOTION TO COMPEL ARBITRATION AND
TO STAY THIS ACTION**

COMES NOW, Defendant WHALECO, INC. d/b/a Temu (hereinafter “Whaleco”), by and through its undersigned counsel, respectfully moves to compel arbitration and stay this matter pending the outcome of the arbitration.

Plaintiff, Heather Smith (“Smith”), filed her Class Action Petition (“Petition”) on May 22, 2023, alleging claims under the Oklahoma Telephone Solicitation Act, Okla. Stat. tit 15, § 775C.1, et seq. (“OTSA”). Smith, however, expressly agreed to arbitrate the claims in her Petition, and waived her right to a jury trial as well as the opportunity to bring a class action suit or class arbitration against Whaleco; therefore, this Court must compel her to arbitration and stay this action.

WHEREFORE, Whaleco respectfully requests that the Court compel the Plaintiff to arbitrate the alleged claims and stay this action pending the outcome of the arbitration, and for such other relief that the Court deems just and proper.

Respectfully submitted,

s/John A. Burkhardt

John A. Burkhardt, OBA #1336

Email: john.burkhardt@schafferherring.com

Attorney for Defendant

SCHAFFER HERRING PLLC

7134 S. Yale, Ste. 300

Tulsa, OK 74136

Direct Line: (918) 856-5378

Facsimile: (918) 550-8106

Robert A. Stines (*pro hac vice*)

Florida Bar No. 78447

SMITH GAMBRELL & RUSSELL LLP

201 N. Franklin Street

Suite 3550

Tampa, Florida 33602

rstines@sgrlaw.com

CERTIFICATE OF ELECTRONIC SERVICE AND FILING

This is to certify that on this 25th day of July 2023, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to all counsel of record. To counsel's knowledge, there are no non-ECF registrants who are counsel in this case.

s/John A. Burkhardt

John A. Burkhardt